

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matters of

Review of the Section 251 Unbundling Obligations    )  
of Incumbent Local Exchange Carriers                    )

CC Docket No. 01-338

Implementation of the Local Competition Provisions   )  
of the Telecommunications Act of 1996                    )

CC Docket No. 96-98

Deployment of Wireline Services Offering Advanced    )  
Telecommunications Capability                            )

CC Docket No. 98-147

**COMMENTS OF WORLDNET TELECOMMUNICATIONS, INC.**

WorldNet Telecommunications, Inc. ("WorldNet"), by its attorneys and pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>1</sup> hereby files these Comments in support of the Telecommunications Regulatory Board of Puerto Rico's (the "Board" or "TRB") December 30, 2003 waiver petition in the above captioned proceeding.<sup>2</sup> The Commission's own Order in its Triennial Review proceeding ("Triennial Review Order")<sup>3</sup> mandates a grant of this waiver petition, as the Commission's national finding of no impairment (discussed *infra*) is premised upon national market conditions that do not exist in Puerto Rico. In particular, as the Board notes, switch deployment in Puerto Rico lags far behind that of the U.S. mainland. Moreover, the incumbent provider in Puerto Rico, the Puerto Rico Telephone Company ("PRTC") is not

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<sup>1</sup> See 47 C.F.R. Sections 1.415 and 1.419.

<sup>2</sup> *Wireline Competition Bureau Seeks Comment On Waiver Petition Filed By The Telecommunications Regulatory Board Of Puerto Rico For Enterprise Market Switching Impairment*, DA No. 04-7, Public Notice, Doc. Nos. 96-98, 98-147, 01-338 (rel. Jan. 9, 2004).

<sup>3</sup> See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*), corrected by Errata, 18 FCC Rcd 19020 (2003) (*Triennial Review Order Errata*), petitions for review pending, *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases).

ready to provide the meaningful access to unbundled network element ("UNE") loops that successful switch deployment requires.

The Board deserves high praise for the enormous amount of work it performed in a short amount of time in order to meet the Commission's 90-day deadline for evaluating economic and barriers to deployment of enterprise switching in Puerto Rico. In the Triennial Review Order the Commission sought feedback relating to the deployment of local switching and related issues and now has received this feedback from the Board. The Board established a substantial record, reviewed that record, and found that local conditions in Puerto Rico demand a waiver of the Commission's rules.

WorldNet is a Competitive Local Exchange Carrier ("CLEC") that operates solely in the Puerto Rico market, and was a primary participant in the proceedings before the Board that led to the filing of Board's waiver petition. WorldNet can attest from its own experience that the economic and operational barriers associated with interacting with PRTC are severe. The Board's well-argued and amply supported petition demonstrates that local conditions in Puerto Rico justify waiver of the rules. Accordingly, the Board's petition must be granted.

#### **I. The Board's Waiver Petition.**

The Board requests that the Commission waive its rule exempting PRTC from unbundling circuit switching used by competitive local exchange carriers ("CLECs") to provide service to end users using DS1 capacity and above loops in defined Puerto Rico markets.<sup>4</sup> The Board seeks to rebut the Commission's finding in the Triennial Review Order that CLECs are not impaired without access to local circuit switching to serve enterprise customers.<sup>5</sup> The Board

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<sup>4</sup> See *Wireline Competition Bureau Seeks Comment on Waiver Petition Filed by the Telecommunications Regulatory Board of Puerto Rico for Enterprise Market Switching Impairment*, Public Notice, DA 04-7 (released Jan. 9, 2004) ("PN").

<sup>5</sup> See PN at 1.

states that due to operational barriers present in Puerto Rico's local telecommunications market, CLECs are impaired without the ability to obtain unbundled local switching to provide service to enterprise customers.<sup>6</sup>

## **II. The Triennial Review Order Mandates a Grant of the TRB's Waiver Request.**

The Triennial Review Order explicitly allows state commissions, such as the TRB, to petition the Commission for a waiver of the Commission's finding of no impairment with regard to high-cap switching in the event that a state commission determines that operational or economic barriers exist in a market.<sup>7</sup> Only one state commission, the TRB, has filed such a waiver petition. The TRB worked exhaustively and expeditiously to conduct a proceeding leading up to the filing of its waiver petition. As demonstrated *infra*, the TRB has just cause for rebutting the Commission's findings of no impairment. The Commission noted in its *Triennial Review Order* that the state commissions are "uniquely positioned" to make their own independent findings based upon local market evidence.<sup>8</sup> The Board has now done so. For the Commission not to grant Board's waiver request would thus be wholly inconsistent with the Commission's own instructions to the states in the *Triennial Review Order*.

## **III. The Commission's National Findings of No Impairment are Inconsistent with the Status of the Puerto Rico Market.**

The Commission made its national finding of no impairment with regard to high-cap switching based upon two primary conclusions, neither of which is true in Puerto Rico: (1) that there has been a "significant nationwide deployment of switches by competitive providers to serve the enterprise market";<sup>9</sup> and (2) that CLECs "are competing successfully in the provision

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<sup>6</sup> *Id.*

<sup>7</sup> *See* Triennial Review Order at para. 455.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at para. 435.

of switched services, using collocation network with associated backhaul transport, to medium and large enterprise customers without unbundled [high-cap switching].”<sup>10</sup>

However, there is *no* significant CLEC deployment of local switching to serve Puerto Rico. In fact, CLECs have deployed only three percent of the local circuit switches in Puerto Rico, and there is only one switch-based CLEC on the entire island of Puerto Rico.<sup>11</sup> Furthermore, not one CLEC in Puerto Rico is providing switched services via collocation and backhaul transport (i.e., UNE-L), and the only CLEC to deploy its own switches on the island has failed for more than three years in its requests to PRTC for provision of the collocation necessary for a UNE-L-based service platform.<sup>12</sup> These obvious disparities between the national and Puerto Rico markets amply justify a rebuttal of the Commission’s finding of no impairment.

#### **IV. Significant Operational Impairment Exists in All Puerto Rico Markets.**

The Commission set forth standards for determining whether significant operational impairment exists in a geographic market.<sup>13</sup> The facts found by the Board in its proceeding that led to the waiver petition amply show that operational impairment exists in Puerto Rico, regardless of how the geographic market is defined. For instance, PRTC has not provided a single stand-alone unbundled network element (“UNE”) loop to a CLEC in Puerto Rico. PRTC has not completed and provided a final acceptance for a collocation for a CLEC in Puerto Rico. Nor has PRTC provided a single cross-connect to a CLEC in Puerto Rico.<sup>14</sup> Thus, PRTC has not

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<sup>10</sup> *Id.* at para. 453.

<sup>11</sup> *See* WorldNet Closing Brief, TRB Case No. JRT-2003-CCG-0004, pp. 7-8 (Dec. 12, 2003) (“Brief,” a copy of which is attached hereto as *Exhibit A*).

<sup>12</sup> *Id.* at 8 (citation omitted).

<sup>13</sup> *See* 47 C.F.R. Section 51.319(d)(3)(i).

<sup>14</sup> *See* Brief at 11.

completed *any* of the specific activities that the Commission considers to be critical to switch-based competition.

Furthermore, the Triennial Review Order charges state commissions with considering “other evidence” regarding potential operational barriers to rebut the national findings.<sup>15</sup> “Other evidence” demonstrating significant operational barriers is also present in Puerto Rico, as evidenced by the facts that PRTC is not providing local number portability to CLECs in Puerto Rico (PRTC’s failure to do so is currently the subject of a TRB complaint) and that PRTC has little to no experience in cooperating with competitors to gain or share access to necessary easements or rights-of-way provided by third parties.<sup>16</sup> Finally, another significant operational barrier is Puerto Rico’s lack of comprehensive performance standards for PRTC regarding the provision of critical services to CLECs, which has relegated competitors to attempt to create such standards through contractual obligations and, in most cases, extremely costly and extended enforcement proceedings before the TRB.<sup>17</sup>

#### **V. Significant Economic Barriers Exist in All Puerto Rico Markets.**

The Commission’s rules provide that a state commission can establish rebuttal of the Commission’s finding of no impairment based upon operational barriers alone, and indeed, the Board did so in this case.<sup>18</sup> However, economic barriers to switch deployment also exist in Puerto Rico. First, the operational impairments described above create economic barriers, as PRTC’s inexperience in providing the necessities for UNE-L inevitably lead to the CLECs’ untimely and unreliable performance. These barriers in turn impose substantial costs upon those

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<sup>15</sup> See Triennial Review Order at para. 456.

<sup>16</sup> See Brief at 14 (citations omitted).

<sup>17</sup> *Id.* at 15 (citations omitted).

<sup>18</sup> See 47 C.F.R. Section 51.319(d)(3)(i).

CLECs (such as lost customer opportunities and revenues and the dedication of resources to develop processes and efficiencies theretofore undeveloped by PRTC).<sup>19</sup>

Furthermore, PRTC's abysmal wholesale service performance has forced WorldNet to routinely incur costs such as: (1) the cost of months or years of PRTC inaction or failed performance (with the attendant loss of customer opportunities and revenues); (2) the cost of almost constant service commitment follow-up, issue escalation, error correction, and bill reconciliation; and (3) the cost of holding PRTC to its contractual and legal obligations by filing complaints with the TRB.<sup>20</sup> These economic costs are disproportionately greater for Puerto Rico CLECs because PRTC purposefully lags so far behind most other incumbent local exchange carriers in its service experience and performance.<sup>21</sup> Accordingly, substantial economic barriers also exist in Puerto Rico sufficient to rebut the Commission's national finding of no impairment.

## **VI. Conclusion.**

For the foregoing reasons, WorldNet respectfully submits that the Commission grant the TRB's waiver request.

**WorldNet Telecommunications, Inc.**



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<sup>19</sup> See Brief at 16-17.

<sup>20</sup> *Id.* at 17.

<sup>21</sup> *Id.* at 17-18.

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January 30, 2004

### **CERTIFICATE OF SERVICE**

On January 30, 2004, I, the undersigned, a paralegal at Fleischman and Walsh, L.L.P., served copies of WorldNet Telecommunications, Inc.'s foregoing Comments by e-mail to:

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## **EXHIBIT A**

**COMMONWEALTH OF PUERTO RICO  
TELECOMMUNICATIONS REGULATORY BOARD  
OF PUERTO RICO**

FCC's Triennial Review Order	)	Case Number JRT-2003-CCG-0004
	)	
	)	Re: Review of High Capacity Business
	)	Customer Local Circuit Switching
	)	

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**WORLDNET CLOSING BRIEF**

WorldNet Telecommunications, Inc. ("WorldNet") hereby submits its closing brief in this proceeding in accordance with the Board's November 26, 2003 Resolution and Order. At issue is the Board's prerogative to preserve local autonomy in the development and enhancement of telecommunications in Puerto Rico, rather than ceding control over such decision to a national finding without regard to the specific conditions in this market. As set forth herein, the record in this case shows that the FCC's national finding of no impairment with regard to unbundled DS1 capacity and above local circuit switching ("high-cap switching") does not even come close to reflecting the operational or economic reality in Puerto Rico markets. The Board should file a petition for waiver of this finding with the FCC by no later than December 31, 2003, the deadline provided by the FCC.

Notably, it is very important that the Board act to file the requisite petition by December 31<sup>st</sup>. To ease the Board's task, WorldNet has submitted with this brief a draft proposed petition for submittal to the FCC. WorldNet believes that a failure to file by December 31<sup>st</sup> would mean abandoning local discretion and defaulting to a national ruling with no consideration of or reference to the Puerto Rico market. This Board should not permit such a result to occur.

## I. INTRODUCTION

### A. Legal Background

In its *Triennial Review Order*, the FCC rejected a cookie cutter “national approach” and instead deferred to state commissions the obligation to evaluate local conditions and determine what is needed to foster a sound competitive telecommunications environment. The FCC preliminarily found on a national basis that competitive carriers are not impaired without unbundled access to incumbent LEC high-cap switching.<sup>1</sup> The FCC based its finding primarily on its conclusion that the record before it demonstrated that there was “significant nationwide deployment of switches by competitive providers to serve the enterprise market.”<sup>2</sup> The FCC also based its conclusion on its perception that “competitive LECs are competing successfully in the provision of switched services, using a collocation network with associated backhaul transport, to medium and large enterprise customers without unbundled local circuit switching.”<sup>3</sup>

Importantly, however, the FCC recognized that, notwithstanding its national finding, “a geographically specific analysis could possibly demonstrate that competitive carriers are impaired without [such access] in a particular market.”<sup>4</sup> The FCC went on to delegate the authority to make this market-specific analysis to state commissions.<sup>5</sup>

To ensure that state commissions made their market analyses consistently and properly, the FCC established specific guidelines for state commissions to apply.<sup>6</sup> These guidelines effectively require a two-step analysis. First, state commissions must “define the markets in which they will evaluate impairment by determining the relevant geographic area to include in

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<sup>1</sup> See *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 03-36 at ¶ 451 (rel’d Aug. 21, 2003) (“TRO” or “Triennial Review Order”).

<sup>2</sup> TRO at ¶ 435.

<sup>3</sup> TRO at ¶ 453.

<sup>4</sup> TRO at ¶ 454.

<sup>5</sup> See TRO at ¶ 190.

<sup>6</sup> See TRO at ¶ 189.

each market.”<sup>7</sup> Second, state commissions must determine whether operational or economic barriers exist in each of the defined markets based on, at a minimum, a list of specific operational and economic characteristics.<sup>8</sup>

In the event that a state commission determines that operational or economic barriers exist in a market, the FCC provides that the state commission may petition the FCC for a waiver of the FCC’s finding of no impairment with regard to high-cap switching.<sup>9</sup> The FCC requires each state commission to file its waiver petition within ninety (90) days of the effective date of the *Triennial Review Order* (i.e., by December 31, 2003).<sup>10</sup>

## **B. Case Summary**

On October 1, 2003, the Board initiated this proceeding to perform the market-by-market analysis contemplated by the FCC with regard to high-cap switching. In doing so, the Board has received a record that provides perhaps the most clear cut case for waiver of the FCC’s national finding than any other jurisdiction subject to the *Triennial Review Order*.

To begin with, the FCC’s national findings about “significant” CLEC switch deployment and successful competition through collocation (i.e., UNE-L) do not even come close to reflecting the reality of Puerto Rico markets. According to the record in this case, only about 3% of the local wireline circuit switches in Puerto Rico have been deployed by CLECs. This de minimis figure is hardly “significant.” In fact, it is the same small market penetration percentage that the FCC cited in specifically finding impairment with regard to mass market local circuit switching.<sup>11</sup> Similarly, there is not a single CLEC that is providing switched services in Puerto Rico through UNE-L. In other words, CLECs have not even had the opportunity to try UNE-L

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<sup>7</sup> See *TRO* at ¶ 495.

<sup>8</sup> See *TRO* at ¶¶ 455-458; see also 47 C.F.R. § 51.319(d)(3).

<sup>9</sup> See *TRO* at ¶ 455.

<sup>10</sup> See *TRO* at ¶ 455.

<sup>11</sup> See *TRO* at ¶ 438.

in Puerto Rico, much less “successfully compete” through UNE-L as the FCC concluded in its national review.

Even if, however, the FCC’s national findings somehow reflected the reality in Puerto Rico markets, this is still not even a close case under the required FCC analysis. With regard to operational barriers, the facts are simple: (1) PRTC has not finalized a single collocation despite CLEC collocation orders that have been pending for over three years (a process that in most jurisdictions involves a provisioning interval of only 90 days); and (2) PRTC has never provided stand-alone UNE loops or cross-connects. Moreover, with regard to item (2), there is nothing in the record to suggest that PRTC will suddenly be able to provide UNE loops or cross-connects without any difficulties or delays. Indeed, the record reflects that such immediate competence is not realistic for any ILEC, much less PRTC with its unparalleled and continuing history of wholesale service problems. Simply put, PRTC has never successfully provided any of the services that the FCC has identified as critical to CLEC switch deployment and there is nothing in the record to support the conclusion that it is now (or even soon will be) able to provide these services without significant operational difficulties and delays. There is conceivably no clearer case than this of an operational barrier sufficient to rebut the FCC’s national no impairment finding.

Similarly, PRTC’s inexperience and chronic performance problems are also plain economic barriers. As noted below, the record shows that PRTC’s inexperience and insufficient provisioning practices have imposed (and, in the case of UNE loops, collocation, and cross-connects, will undoubtedly continue to impose) unnecessary and competitively prohibitive legal, administrative, and opportunity costs in Puerto Rico markets. The record also reveals that these extraordinary, additional costs of doing business in Puerto Rico, along with other service costs,

create a situation in which CLEC service to Puerto Rico enterprise customers without access to PRTC high-cap switching could only be justified by CLEC market penetration numbers that far exceed what most, if not all, CLECs in Puerto Rico now currently hold for all of Puerto Rico, much less discrete markets within the island.

As provided below, the Board should file a petition for waiver of the FCC's national no impairment finding with regard to high-cap switching by the required deadline, December 31, 2003. The FCC's finding simply does not reflect reality in Puerto Rico -- a jurisdiction with obvious operational and economic barriers to robust switch-based competition.

## **II. ARGUMENT**

### **A. The Board Has the Authority to Rebut the FCC's National No Impairment Finding.**

Before addressing the FCC analysis, WorldNet feels compelled to respond to PRTC's contention in its testimony that the Board does not have anything to decide in this case because the FCC considered Puerto Rico evidence in making its national no impairment finding with regard to high-cap switching.<sup>12</sup> PRTC's position is a misleading distortion of that ruling and clearly wrong.

Although the FCC found no evidence of impairment on a national basis in the *Triennial Review Order*, it expressly ruled that its finding could be rebutted by independent state commission determinations.<sup>13</sup> Indeed, the FCC specifically recognized that a state commissions' "geographically specific analysis could possibly demonstrate that competitive carriers are impaired without access to unbundled incumbent LEC [high-cap switching] in a particular

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<sup>12</sup> See Reynolds Direct Testimony at 3 (lines 6-14), 4 (lines 1-10) & 6 (lines 5-8) ("As the [FCC] found, there is no impairment in Puerto Rico.").

<sup>13</sup> See *TRO* at ¶ 190 & 454.

market.”<sup>14</sup> According to the FCC, despite its national findings, state commissions are “uniquely positioned” to make their own independent findings based on local market evidence instead of a consolidated record concerning the national as a whole (as employed by the FCC).<sup>15</sup>

Simply put, the FCC did not even mention Puerto Rico in the *Triennial Review Order*, much less make any specific findings about local Puerto Rico or any other individual states or jurisdictions. Instead, the FCC found that the Board (not the FCC) is in the best position to question its national finding on a more granular market-by-market basis for Puerto Rico, based on its unique history and customs. That is what the Board is doing here. Indeed, the Board specifically asked the FCC to give it the opportunity to make its own decision about Puerto Rico markets, and that is exactly what the FCC did.<sup>16</sup> PRTC completely confuses the issue when it suggests that the FCC’s national finding should influence the Board’s independent analysis here or that it somehow leaves the Board powerless to protect Puerto Rico telephone markets from cookie-cutter national findings that obviously do not fit.

**B. The FCC’s National Findings are not Consistent with the Facts in Puerto Rico.**

The FCC based its national no impairment finding with regard to high-cap switching on two primary conclusions. Neither of these conclusions even remotely reflects the market conditions in Puerto Rico. These disparities are an obvious and ample basis upon which to rebut the FCC’s national findings.

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<sup>14</sup> See *TRO* at ¶ 454.

<sup>15</sup> See *TRO* at ¶ 455.

<sup>16</sup> See Letter of Phoebe Forsythe Isales, President, Puerto Rico Telecommunications Regulatory Board, Docket No. 01-338 (filed Jan. 29, 2003) (“Specifically, the FCC should . . . preserve the Board’s discretion to determine UNE availability based upon local conditions. In this regard, the Board fully supports the position that state flexibility to maintain UNE-P as well as the ability to add to any national UNE list is critical to keeping competition on track.”).

**1. There has not been a “significant” deployment of local wireline switches by CLECs in Puerto Rico.**

The first conclusion that the FCC based its national no impairment finding on was that there has been a “significant nationwide deployment of switches by competitive providers to serve the enterprise market.”<sup>17</sup> Although this may be true from a national perspective, it is plainly not true in Puerto Rico.

The record in this case reflects that PRTC owns all but four (4) of the one hundred and eight (108) local service switches currently installed and operating in Puerto Rico.<sup>18</sup> In short, CLECs have deployed only about 3% of the local circuit switches in Puerto Rico. This is not “significant” CLEC deployment. In fact, 3% is the same small market penetration percentage that the FCC cited in finding impairment with regard to mass market local circuit switching.<sup>19</sup>

Moreover, the four CLEC switches in Puerto Rico are all owned by a single CLEC, Centennial Puerto Rico License Corp. (“Centennial”).<sup>20</sup> According to expert record testimony, mainland markets comparable in size to San Juan alone have numerous switch based local providers.<sup>21</sup> The entire island of Puerto Rico has one. This, too, cannot be found to be “significant” CLEC deployment. The FCC’s national finding about “significant” CLEC switch deployment is simply not consistent with the market reality in Puerto Rico.

**2. No CLECs are competing in Puerto Rico using UNE-L (successfully or otherwise).**

The second conclusion that the FCC based its national no impairment finding on was that CLECs “are competing successfully in the provision of switched services, using collocation

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<sup>17</sup> See TRO at ¶ 435.

<sup>18</sup> See Reynolds Direct Testimony at Exhibit 1, p. 4; Centennial Response to Board Initial Information Request II.2.

<sup>19</sup> See TRO at 438.

<sup>20</sup> See Centennial Response to Board Initial Information Request II.2.

<sup>21</sup> See Walker Direct Testimony at 3 (lines 27-31).



network with associated backhaul transport, to medium and large enterprise customers without unbundled [high-cap switching].”<sup>22</sup> Again, although this may be true in other parts of the nation, it is plainly not true in Puerto Rico.

The record reflects that CLECs in Puerto Rico are not “competing successfully” in providing switched services via collocation and backhaul transport (i.e., UNE-L). In fact, they are not competing at all. Not one CLEC in Puerto Rico is providing switched services using UNE-L. Indeed, the only CLEC to deploy its own local switches in Puerto Rico (i.e., Centennial) has been asking PRTC to provide the collocation necessary for a UNE-L based service platform for more than three years without success.<sup>23</sup>

Like the FCC’s national finding about “significant” CLEC switch deployment, the FCC’s national finding about “successful” UNE-L based competition has absolutely no basis in fact in Puerto Rico. These obvious disparities alone justify rebuttal of the national no impairment finding.

**C. The Board should define Puerto Rico markets based on existing PRTC wire center service areas.**

In the *Triennial Review Order*, the FCC provided specific guidelines for the Board to determine the markets appropriate for its analysis in this proceeding. According to the FCC:

A state commission shall define the markets in which it will evaluate impairment by determining the relevant geographic area to include in each market. In defining markets, a state commission shall take into consideration the location of [enterprise] market customers actually being served (if any) by competitors, the variation in factors affecting competitors’ ability to serve each group of customers, and competitors’ ability to target and serve specific markets profitably and efficiently using currently available technologies.<sup>24</sup>

In creating this standard, the FCC explained that:

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<sup>22</sup> See *TRO* at ¶ 453.

<sup>23</sup> See Bogaty Rebuttal Testimony at 3 (lines 5-11) (relying on *Centennial Puerto Rico License Corp. v. PRTC*, Request for Emergency Order and Complaint, Case No. JRT-2003-Q-0070 (filed May 13, 2003)).

<sup>24</sup> See 47 C.F.R. § 51.319(d)(2)(i).

State commissions should consider how competitors' ability to use self-provisioned switches or switches provided by a third-party wholesaler to serve various groups of customers varies geographically and should attempt to distinguish among markets where different findings of impairment are likely.<sup>25</sup>

Moreover, the FCC recognized that:

states have implemented varied administrative tools to distinguish among certain markets within a state on a geographic basis for other purposes including retail ratemaking, the establishment of UNE loop rate zones, and the development of intrastate universal service mechanisms. If a state determines, after considering the factors just described, that these already-defined markets would be appropriate to use in this context as well, it may choose to use these market definitions.<sup>26</sup>

Finally, the FCC specifically instructed that state commissions "may not define the market as encompassing the entire state."<sup>27</sup>

In defining the relevant markets in Puerto Rico, WorldNet directs the Board to the expert testimony submitted into the record on WorldNet's behalf by Mr. Don J. Wood and Mr. Brian F. Pitkin.<sup>28</sup> In their testimony, Mr. Wood and Mr. Pitkin explain that under normal circumstances, many of the FCC's market-definition guidelines can be linked to the economics and other considerations inherent in wire center serving areas.<sup>29</sup> To that end, they have recommended, and WorldNet adopts, the position that the Board should use PRTC existing wire center serving areas to define the individual markets within Puerto Rico.<sup>30</sup>

Notwithstanding, as Mr. Wood and Mr. Pitkin also explain, the Board's definition of individual markets within Puerto Rico, although required by the FCC, arguably have no effective bearing on the outcome of this proceeding. As they explain, the operational and most of the economic barriers existing in Puerto Rico to CLEC switch deployment do not vary throughout

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<sup>25</sup> See TRO at ¶ 495.

<sup>26</sup> See TRO at ¶ 496.

<sup>27</sup> See TRO at ¶ 495; see also 47 C.F.R. § 51.319(d)(2)(i).

<sup>28</sup> See Wood/Pitkin Direct Testimony at 5-6.

<sup>29</sup> See Wood/Pitkin Direct Testimony at 5 (lines 35-43).

<sup>30</sup> See Wood/Pitkin Direct Testimony at 6.

the island. In particular, the operational and economic barriers flowing from PRTC's inexperience and failed experience in providing UNE loops, collocation, and cross-connects extends to every Puerto Rico "market" equally. Although certain individualized distinctions between markets may still exist (e.g., different PRTC pricing for services provided in different areas of Puerto Rico), the core operational and economic barriers in Puerto Rico apply without geographic distinction to the entire island and alone lead to the ultimate conclusion that "regardless of the geographic market definition employed, requesting carriers are impaired without access to [unbundled PRTC high-cap switching]."<sup>31</sup>

In short, even though sufficient operational and economic impairments exist throughout Puerto Rico, the Board should, as required by the FCC, define and apply the FCC's operational and economic analysis to Puerto Rico markets defined by existing PRTC wire center serving areas.

**D. Significant operational impairment exists in all Puerto Rico markets.**

Even if the FCC's national impairment findings somehow made sense in Puerto Rico, the Board nevertheless can and should rebut these findings by informing the FCC of the significant operational barriers existing in Puerto Rico markets.

**1. PRTC is not ready or able to provide stand-alone UNE loops, collocation, or cross-connects.**

The *Triennial Review Order* instructs that the Board may rebut the FCC's national no impairment finding if it finds that operational barriers exist in Puerto Rico markets.<sup>32</sup> According to the FCC:

In making this showing, the state commission shall consider the following operational characteristics: incumbent LEC performance in provisioning loops; difficulties associated with obtaining collocation space due to lack of space or

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<sup>31</sup> See Wood/Pitkin Direct Testimony at 6 (lines 42-44).

<sup>32</sup> See *TRO* at ¶ 456; 47 C.F.R. § 51.319(d)(3).

delays in provisioning by the incumbent LEC; and the difficulties associated with obtaining cross connects in the incumbent LEC's wire center.<sup>33</sup>

The application of this test to the record in this case is not complicated. The record shows that PRTC has not provided a stand-alone UNE loop to a CLEC in Puerto Rico.<sup>34</sup> PRTC has not completed and provided a final acceptance for a collocation for a CLEC in Puerto Rico.<sup>35</sup> And, PRTC has not provided a cross-connect to a CLEC in Puerto Rico.<sup>36</sup> Simply put, the FCC identified three specific activities that it considers to be critical to switch-based competition, and PRTC has not successfully done any of them.

Moreover, the record does not support the contention by PRTC in this proceeding that, despite its inexperience, PRTC is nevertheless "ready, willing, and able" to provide stand-alone UNE loops, collocation, and cross-connects effectively. To begin with, as a general matter, it is unrealistic to assume that any ILEC can provide a service without difficulties or delays when it has never provided the service before.<sup>37</sup> Indeed, PRTC witness Correa readily admitted in his direct testimony that problems with new service offerings should be expected.<sup>38</sup> Under the best circumstances, therefore, it would be difficult for any state commission to find that an ILEC that had never provided a UNE loop, collocation, or cross-connect would nevertheless be able to do so well enough to validate the FCC's no impairment finding.

The record reveals beyond this, however, that this case does not even involve the best circumstances. Rather, the record documents a track record of PRTC wholesale service failures

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<sup>33</sup> See 47 C.F.R. § 51.319(d)(3)(i).

<sup>34</sup> See Correa Direct Testimony at 8 (lines 1-3). Mr. Correa mistakenly testified that PRTC has provided as contemplated in the FCC's analysis because it has provided UNE-P circuits to WorldNet that include UNE loops. The FCC's analysis, however, refers to providing stand-alone UNE loops -- a fundamentally different process that, unlike UNE-P, involves the physical cutover of loops to a CLEC collocation or switch. See Bogaty Rebuttal Testimony at 5 (lines 19-33); Walker Rebuttal Testimony at 3 (lines 42-45) & 4 (lines 1-6).

<sup>35</sup> See Correa Direct Testimony at 4 (lines 4-6).

<sup>36</sup> See Correa Direct Testimony at 10 (lines 2-5).

<sup>37</sup> See Bogaty Direct Testimony at 3 (lines 34-41); Walker Rebuttal Testimony at 1 (lines 27-30) & 2 (lines 1-3).

<sup>38</sup> See Correa Direct Testimony at 4 (lines 15-16).

(including specific collocation failures) that make PRTC's claims of instant and unprecedented competence even less credible. Indeed, this documented track record includes instances where even after two to four years of experience and opportunity, PRTC has failed to devote the resources or attention necessary to provide even the most basic services and facilities without substantial operational problems.

To begin with, with regard to collocation, the record simply does not support PRTC contentions that it is "ready, willing, and able," that it is providing collocation "apace," or that it has met all of its interconnection agreement deadlines in dealing with collocation requests.<sup>39</sup> In reality, the only attempt that PRTC has made to provide collocation in Puerto Rico resulted in a formal complaint filed with the Board earlier this year. In the complaint, Centennial reported that PRTC failed to meet a July 2003 interconnection agreement deadline for a number of Centennial collocation orders and that other Centennial collocation orders have been pending with PRTC for over three years.<sup>40</sup> And, Centennial has commented on the record in this proceeding that despite its settlement of its complaint against PRTC, the collocation process devised by PRTC is still "highly problematic" and that "many issues remain."<sup>41</sup>

Very similarly, the record also reveals that in 2001, PRTC committed to be "ready, willing, and able" to make UNE-P available for the first time in Puerto Rico by no later than October 1, 2002 (i.e. almost a year later and over six years after it was first required by federal law to do so). On October 1, 2002, however, PRTC did not provide UNE-P as required or promised. Although PRTC tacitly accepted and processed initial UNE-P orders, it did so without

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<sup>39</sup> See Correa Direct Testimony at 5 (lines 11-13). Notably, Mr. Reynolds' testimony that PRTC is ready to provide collocation simply because collocation space is available is also not supported by law. The FCC analysis requires consideration of space availability, but also of difficulties and delays in obtaining that collocation space. See TRO at ¶ 456.

<sup>40</sup> See Bogaty Rebuttal Testimony at 3 (lines 5-11) (relying on *Centennial Puerto Rico License Corp. v. PRTC*, Request for Emergency Order and Complaint, Case No. JRT-2003-Q-0070 (filed May 13, 2003).

<sup>41</sup> See Centennial Response to Initial Board Information Requests II.9 & II.17.

processes or systems in place for a host of important UNE-P arrangements, including, importantly, detailed usage billing.<sup>42</sup> Moreover, the completion of WorldNet's initial orders was (and, over a year later, still is) plagued with significant and costly process breakdowns, including widespread and recurring billing errors, completely unnecessary disconnections of WorldNet customers, and a billing system that, according to PRTC, was (and still is) not yet configured to charge WorldNet based on WorldNet customers' actual usage of UNE-P lines.

Finally, the record also reveals that PRTC has had four years of experience in providing resale services to WorldNet. Yet, despite continuing WorldNet complaints, meetings, and PRTC promises, PRTC is providing bills to WorldNet that require WorldNet to make approximately 5,000 manual adjustments each month and, in some cases, reflect errors that have been included on every WorldNet bill for the past four years.<sup>43</sup>

In short, in looking at the analysis before the Board, it is difficult to envision any stronger showing of an operational barrier than an ILEC that has absolutely no experience in successfully providing stand-alone UNE loops, collocation, or cross-connects. Indeed, perhaps the only possibility to have a stronger showing is to have a record in which the ILEC not only does not have any successful experience, but actually has negative experiences in providing these services and a consistent track record of being unprepared, uninterested, and incapable of providing wholesale services as and when required or promised. That is the case that the Board has before it here.

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<sup>42</sup> In like manner, the PRTC processes and plans described by Mr. Correa in his direct testimony do not address a number important provisioning issues with which PRTC has historically had substantial and crippling problems, including most prominently, billing.

<sup>43</sup> See Bogaty Direct Testimony at 4 (lines 4-10).

**2. PRTC is not ready or able to provide other services necessary for CLEC switch deployment.**

In the *Triennial Review Order*, the FCC did not limit state commissions to considering only ILEC performance with regard to providing UNE loops, collocation, and cross-connects. Instead, the FCC went on to ask state commissions also to consider “other evidence” regarding potential operational barriers.<sup>44</sup>

In this case, the record includes “other evidence” of operational barriers in Puerto Rico markets, which, again, reflects problems created by PRTC inexperience and its history of ignoring service obligations until forced to confront them. For example, the record indicates that PRTC is not providing local number portability to CLECs in Puerto Rico and that its failure to do so is currently the subject of a Board complaint.<sup>45</sup> Local number portability is a vital and necessary component to CLEC switch deployment, and it is an obligation and issue that PRTC has largely ignored.

Similarly, the record indicates that PRTC has little to no experience in cooperating with competitors to gain or share access to necessary easements or rights-of-way provided by third parties.<sup>46</sup> Quite simply, without this experience or any existing service commitments or processes with regard to this necessary service, PRTC has placed itself in another very powerful position to frustrate CLEC efforts to deploy facilities and, accordingly, to create a significant operational barrier.

**3. Puerto Rico is not ready to effectively provide services necessary for CLEC switch deployment.**

In addition to “other evidence” about operational barriers flowing from PRTC, the record also includes evidence about operational barriers flowing from the state of Puerto Rico markets

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<sup>44</sup> See *TRO* at ¶ 456.

<sup>45</sup> See Bogaty Direct Testimony at 5 (lines 29-33); Walker Rebuttal Testimony at 4 (lines 2-6).

<sup>46</sup> See Bogaty Direct Testimony at 5 (lines 34-37).

themselves. In particular, the record reflects that Puerto Rico is simply not as prepared or experienced in facilitating switch-based competition as the other jurisdictions subject to the *Triennial Review Order*.<sup>47</sup>

As noted in the record, unlike many of its counterpart jurisdictions, Puerto Rico has yet to enact or provide comprehensive performance standards for PRTC in its provision of critical services to CLECs.<sup>48</sup> The absence of these standards has relegated competitors to trying to create such standards through contractual obligations and, in most cases, extremely costly and extended enforcement proceedings before the Board.<sup>49</sup>

Moreover, as noted above, CLEC switch deployment in Puerto Rico has been negligible in comparison to other jurisdictions governed by the *Triennial Review Order*. Puerto Rico simply has not yet had the opportunity to establish the support systems and vendors, consultants, technical experts, and other critical resources that have become readily available in other jurisdictions.<sup>50</sup> In essence, without access to PRTC high-cap switching, CLECs would be forced to incur the time, resources, and expense of creating these support systems nearly from scratch.

Finally, another operational barrier noted in the record regarding Puerto Rico is the relative lack of competitive transport facilities.<sup>51</sup> Under even the best-case scenario, a CLEC switch owner has only two alternatives for transport in Puerto Rico: PRTC or Centennial. In the highly likely event that Centennial does not provide services on a particular route, WorldNet would be compelled to obtain transport from PRTC, which would have no incentive to provide this service swiftly or at a competitive price.

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<sup>47</sup> See WorldNet Response to Supplement Board Interrogatory No. 14; see also Walker Direct Testimony at 4 (lines 42-45) & 5 (lines 1-11).

<sup>48</sup> See WorldNet Response to Initial Board Interrogatory No. 17.

<sup>49</sup> See WorldNet Response to Initial Board Interrogatory No. 17.

<sup>50</sup> See WorldNet Response to Initial Board Interrogatory No. 17.

<sup>51</sup> See WorldNet Response to Supplemental Board Interrogatory No. 14.



**E. Significant economic barriers exist in all Puerto Rico markets.**

Just as with its evaluation of operational barriers, the Board can and should rebut the FCC's national no impairment finding informing the FCC of the significant economic barriers existing in Puerto Rico markets. Indeed, notably, under the FCC analysis, the Board can establish rebuttal based on economic barriers alone, just as it can be based solely on operational barriers.<sup>52</sup>

In considering economic barriers in Puerto Rico, the FCC requires the Board to consider the following economic characteristics:

the cost of entry into a particular market, including those caused by both operational and economic barriers to entry; requesting telecommunications carriers' potential revenues from serving enterprise customers in that market, including all likely revenues to be gained from entering that market; the prices requesting telecommunications carriers are likely to be able to charge in that market, based on a consideration of prevailing retail rates the incumbent LEC charges to the different classes of customers in the different parts of the state.<sup>53</sup>

**1. The operational barriers that now exist in Puerto Rico markets create substantial economic barriers.**

The operational barriers that now exist in Puerto Rico markets create plain economic barriers sufficient to rebut the FCC's national no impairment finding. Indeed, there are effectively two categories of operational barriers in Puerto Rico that create these economic barriers.

First, economic barriers are created in Puerto Rico by the operational barriers that are the focus of the FCC's analysis. In particular, PRTC's and Puerto Rico's inexperience with UNE loops, collocation, cross-connects, and other services critical (e.g., local number portability) to switch-based competition plainly sets the stage for untimely and unreliable performance. This

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<sup>52</sup> See 47 C.F.R. § 51.319(d)(3)(i) (stating that a state commission can establish rebuttal "if it finds that operational or economic barriers exist").

<sup>53</sup> See 47 C.F.R. § 51.319(d)(3)(i)(B).

poor performance will invariably impose upon Puerto Rico CLECs substantial costs, including things like lost customer opportunities and revenues, as well as the dedication of administrative resources required for CLECs to, among other things, work through primarily manual processes, learn and adapt to new procedures, monitor, identify, and escalate process breakdowns, reconcile constant billing errors, and (as the record in this case indicates), at times, develop necessary PRTC processes where PRTC has failed to do so.

Second, economic barriers are also created in Puerto Rico by operational barriers that nevertheless exist, but are not the focus of the FCC's analysis per se. For example, the record reflects that PRTC has an unparalleled history of abysmal wholesale service performance that has forced CLECs in Puerto Rico to incur extraordinary costs.<sup>54</sup> In WorldNet's experience, these costs routinely include: (1) the cost of months or years of PRTC inaction or failed performance (with the attendant loss of customer opportunities and revenues), (2) the cost of almost constant service commitment follow-up, issue escalation, error correction, and bill reconciliation, and, ultimately (3) the cost of holding PRTC to its contract and legal obligations by filing a Board complaint. Moreover, even when PRTC has purported to act, it has responded with ad hoc, piecemeal, unwritten, manual, and often ignored process, procedures, and performance that increase CLEC costs exponentially as well.<sup>55</sup>

Finally, the costs forced upon CLECs in Puerto Rico by all of these barriers will, in most cases, be disproportionately greater than CLECs in most other jurisdictions. In short, CLECs in Puerto Rico face a greater cost burden than CLECs in other jurisdictions because PRTC has kept itself so far behind most other ILECs in its service experience and performance. For example, where (as here) PRTC has little to no experience with UNE loops, collocation, cross-connects,

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<sup>54</sup> See WorldNet Response to Initial Board Interrogatory No. 17.

<sup>55</sup> See WorldNet Response to Initial Board Interrogatory No. 17.

and other related services, ILECs in most other jurisdiction have been developing and refining their processes and procedures for these services for years. Accordingly, other ILECs (unlike PRTC) have significantly diminished the difficulties and delays in providing these services and, thus, significantly diminished the costs associated with such difficulties and delays. Similarly, the record reflects no other jurisdiction in which CLECs are relegated to manual and informal processes, systemic and chronically inaccurate bills, and service enforcement litigation to the extent that CLECs in Puerto Rico are. Incredibly, WorldNet bore a number of costs just to help PRTC develop basic UNE-P systems. Composite billing is an example of this, a transitional system developed by WorldNet's expert at WorldNet's expense which PRTC is proposing in its latest interconnection contract to use indefinitely into the future.

In short, all of the existing operational barriers in Puerto Rico markets translate into significant and unique economic barriers for Puerto Rico CLECs.

**2. The likely revenues for CLEC entry into Puerto Rico markets are an economic barrier.**

In addition to the economic barriers created by existing operational barriers in Puerto Rico, the record also establishes an economic barrier in that likely revenues would not justify CLEC service to the Puerto Rico enterprise market without access to PRTC high-cap switching.

The record currently contains potential revenue evaluations by PRTC witness Reynolds and by WorldNet witnesses Wood and Pitkin.<sup>56</sup> In his testimony, Mr. Reynolds purports to provide what he calls a "back of the envelop calculation" to conclude that the revenues associated with a CLEC providing retail service to an enterprise market customer in Puerto Rico justifies CLEC deployment of a switch.<sup>57</sup> According to Mr. Reynolds' calculation, a CLEC

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<sup>56</sup> See Reynolds Direct Testimony at 8 (lines 6-20) & 9 (lines 1-5); Wood/Pitkin Rebuttal Testimony at 1-5.

<sup>57</sup> See Reynolds Direct Testimony at 8 (line 19).

would need only 30 DSIs per month to economically justify the cost of a switch, collocation, and DS1 loops.<sup>58</sup>

In their testimony, Mr. Wood and Mr. Pitkin have identified a number of fundamental errors in Mr. Reynolds' very brief and grossly oversimplified analysis. Among these errors, Mr. Reynolds ignored a number of costs inputs (including, but not limited to, the cost of DS1 loop access, backhaul transport access, collocation equipment, non-recurring UNE and collocation charges, and internal administrative CLEC costs involved in switch deployment).<sup>59</sup> In addition, Mr. Reynolds overstated access revenues by, among other things, using an intra-island access rates that are nine times what the Board has set for Puerto Rico.<sup>60</sup> Ultimately, with corrected inputs, Mr. Reynolds' model indicated that (even with certain costs excluded) a CLEC would need at least 200 DSIs per month to economically justify the deployment of a switch, collocation, and DS1 loops.<sup>61</sup> In other words, the formula indicated that such deployment could only be justified by CLEC market penetration numbers that far exceed what most, if not all, CLECs in Puerto Rico now currently hold for all of Puerto Rico, much less discrete markets within the island.

Simply put, the record plainly establishes the existence of economic barriers sufficient to rebut the FCC's national no impairment finding.

### III. CONCLUSION

In the rest of the jurisdictions covered by the FCC's no impairment finding, competitive carriers have arguably had the benefit of the scheme that Congress created to promote competition. In that scheme, Congress sought to give competitors mechanisms like resale and

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<sup>58</sup> See Reynolds Direct Testimony at 8 (lines 18-20)

<sup>59</sup> See Wood/Pitkin Rebuttal Testimony at 2 (lines 40-41) & 3 (lines 1-29).

<sup>60</sup> See Wood/Pitkin Rebuttal Testimony at 4 (lines 4-23).

<sup>61</sup> See Wood/Pitkin Rebuttal Testimony at 4 (lines 41-44) & 5 (lines 1-14).

UNEs to establish a market presence that would allow them to transition to facilities-based service. In Puerto Rico, however, competitors have not yet had this opportunity. Although PRTC has offered resale for several years, it did not provide a UNE to a competitor in Puerto Rico until late last year (i.e., more than 7 years after it was required by law to do so). And, perhaps more importantly, PRTC has still (despite numerous pending orders) not provided to a competitor a single high capacity UNE circuit.

At a minimum, the unavailability of UNE-based service as a transition to facilities-based service (as Congress intended) has created an obvious operational and economic barrier for competitors in Puerto Rico that competitors in almost every other jurisdiction simply do not face. Simply put, PRTC has not given competitors in Puerto Rico the opportunity to establish a market presence through all of the tools that Congress provided. And, in this proceeding, it would be completely absurd to preserve a presumption in Puerto Rico markets that competitors no longer need a transition mechanism that PRTC has not even made available to them yet.

The FCC's presumption of no impairment simply does not reflect the reality of a competitive market that PRTC has kept years behind the markets served by its ILEC counterparts in the states. Substantial and unique operational and economic barriers exist in Puerto Rico markets, and the Board should seek an immediate waiver of the FCC's no impairment finding at the conclusion of this proceeding. Simply put, Puerto Rico is a perfect example of why the FCC gave the states and territories the opportunity to rebut the national finding no impairment.

Respectfully submitted,

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Counsel for WorldNet Telecommunications, Inc.

Dated: December 12, 2003

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of the Section 251 Unbundling	)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange	)	
Carriers	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act of	)	
1996	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	

**PETITION OF PUERTO RICO TELECOMMUNICATIONS  
REGULATORY BOARD FOR WAIVER UNDER SECTION  
51.319 OF FEDERAL COMMUNICATION COMMISSION RULES**

The Puerto Rico Telecommunications Regulatory Board (“the Board”) hereby submits this Petition for Waiver Under Section 51.319 of the Federal Communications Commission’s (“the Commission’s”) rules concerning unbundling of local circuit switching to serve end users using DS1 capacity and above loops. In particular, the Board requests that the Commission waive its rule exempting incumbent local exchange carriers (“ILECs”) from unbundling circuit switching used to provide service to this market in Puerto Rico.

**INTRODUCTION**

In its *Triennial Review Order*,<sup>1</sup> the Commission found that, at a nationwide level, requesting telecommunications carriers are not impaired without access to local circuit switching to serve end users using DS1 capacity and above loops. The Commission also stated that a state commission could rebut this finding by showing that operational and economic barriers exist in a

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<sup>1</sup> See *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 & 98-147, FCC 03-36, Report and Order and Order on Remand and Notice of Proposed Rulemaking (rel. August 21, 2003) (“*Triennial Review Order*” or “*TRO*”).

particular market that result in impairment. The Board finds that, as a result of economic and operational barriers present in the local telecommunications market in Puerto Rico, requesting carriers *are* impaired without the ability to obtain unbundled local switching to serve customers using DS1 and above capacity, what the Commission has referred to as the “enterprise market.”

Unlike the mainland U.S., competition has been slow to develop in Puerto Rico. For instance, the Commission cited as evidence of no impairment on a national level the “widespread switch deployment” to provide DS1 and higher capacity service.<sup>2</sup> However, the widespread switch development that the Commission highlighted in the *Triennial Review Order* simply does not exist in Puerto Rico. Only one facilities-based competitor exists on the island.<sup>1</sup> Only six resellers exist on the island,<sup>2</sup> with the top two controlling as much as 95% and the top one controlling 80%. In fact, there have been only two active resellers until 2002. This is in contrast to the dozens if not hundreds that exist in many markets on the mainland. The factors that the Commission found justified a finding of no impairment for enterprise customers simply are not present in the Puerto Rico market. Accordingly, the Board respectfully requests that the Commission waive its rule exempting ILECs from unbundling local switching in for the enterprise market in Puerto Rico.

## **BACKGROUND**

The telecommunications market in Puerto Rico has developed from a set of historical, cultural, technical, and political dimensions that are unique within the United States. Prior to 1996, a state-controlled monopoly dominated the market in Puerto Rico. The Puerto Rico Legislature only recently created the Board, in 1996, at the same time it partially privatized the incumbent local telephone company, Puerto Rico Telephone Company (“PRTC”). Since its creation, the Board has worked to promote a transition from a market dominated by a state-

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<sup>2</sup> See TRO at ¶ 419.



controlled monopoly (and characterized by a level and quality of service less than experienced in much of the mainland), to a free market. This process has been difficult, but the Board has made significant progress given the unique obstacles the Puerto Rico market represents. Nevertheless, competition in the local telephone market in Puerto Rico has been slow to develop, and robust, facilities-based competition has yet to take root.

The circumstances that enabled the Commission to make a finding of no impairment for unbundled switching in the enterprise market nationally simply are not present in the Puerto Rico market. The Board has long urged the Commission to take into account Puerto Rico's unique characteristics and to exempt it from national rules. The Board believes that when the Commission takes into account the uniqueness of the Puerto Rico market, as set forth below, it will find that waiver of its earlier finding of "no impairment" for competitors seeking to utilize unbundled switching to serve the enterprise market is appropriate.

## DISCUSSION

Section 1.3 of the Commission's rules states that "[a]ny provision of the rules may be waived by the Commission . . . on petition if good cause therefore is shown."<sup>3</sup> In finding that competitive LECs are not impaired without unbundled local circuit switching when serving the enterprise market, the Commission recognized that "a more geographically specific record may reveal such impairment in particular markets and thus allow states to rebut this national finding based on certain operations and economic criteria."<sup>4</sup> In the *Triennial Review Order* the Commission recognized that "special circumstances" could create impairment without access to local circuit switching to serve enterprise customers in particular markets.<sup>5</sup> Such is the case in Puerto Rico. As set forth below, operational and economic factors support a finding that

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<sup>3</sup> 47 U.S.C. § 1.3.

<sup>4</sup> See *TRO* at ¶ 411.

<sup>5</sup> See *TRO* at ¶ 421

requesting carriers remain impaired without access to local switching for enterprise customers, and that a waiver of rule 51.319(d) is appropriate.

**A. The FCC's National Findings are not Consistent with the Facts in Puerto Rico.**

The FCC based its national no impairment finding with regard to high-cap switching on two primary conclusions. Neither of these conclusions reflects the market conditions in Puerto Rico.

**1. There has not been a "significant" deployment of local wireline switches by CLECs in Puerto Rico.**

The first conclusion that the FCC based its national no impairment finding on was that there has been a "significant nationwide deployment of switches by competitive providers to serve the enterprise market."<sup>6</sup> Although this may be true from a national perspective, it is not true in Puerto Rico.

The record in this case reflects that PRTC owns all but four (4) of the one hundred and eight (108) local service switches currently installed and operating in Puerto Rico.<sup>7</sup> In short, CLECs have deployed only about 3% of the local circuit switches in Puerto Rico. This is not "significant" CLEC deployment. In fact, 3% is the same small market penetration percentage that the FCC cited in finding impairment with regard to mass market local circuit switching.<sup>8</sup>

Moreover, the four CLEC switches in Puerto Rico are all owned by a single CLEC, Centennial Puerto Rico License Corp. ("Centennial").<sup>9</sup> According to expert record testimony, mainland markets comparable in size to San Juan alone have numerous switch-based local

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<sup>6</sup> See TRO at ¶ 435.

<sup>7</sup> See Reynolds Direct Testimony at Exhibit 1, p. 4; Centennial Response to Board Initial Information Request II.2.

<sup>8</sup> See TRO at 438.

<sup>9</sup> See Centennial Response to Board Initial Information Request II.2.

providers.<sup>10</sup> The entire island of Puerto Rico has one. This, too, cannot be found to be “significant” CLEC deployment. The FCC’s national finding about “significant” CLEC switch deployment is simply not consistent with the market reality in Puerto Rico.

**2. No CLECs are competing in Puerto Rico using UNE-L (successfully or otherwise).**

The second conclusion that the FCC based its national no impairment finding on was that CLECs “are competing successfully in the provision of switched services, using collocation network with associated backhaul transport, to medium and large enterprise customers without unbundled [high-cap switching].”<sup>11</sup> Again, although this may be true in other parts of the nation, it is not true in Puerto Rico.

The record reflects that CLECs in Puerto Rico are not “competing successfully” in providing switched services via collocation and backhaul transport (i.e., UNE-L). In fact, they are not competing at all. Not one CLEC in Puerto Rico is providing switched services using UNE-L. Indeed, the only CLEC to deploy its own local switches in Puerto Rico has been asking PRTC to provide the collocation necessary for a UNE-L based service platform for more than three years without success.<sup>12</sup>

Like the FCC’s national finding about “significant” CLEC switch deployment, the FCC’s national finding about “successful” UNE-L based competition has no basis in fact in Puerto Rico. It is the Board’s view that these disparities alone justify rebuttal of the FCC’s no impairment finding.

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<sup>10</sup> See Walker Direct Testimony at 3 (lines 27-31).

<sup>11</sup> See TRO at ¶ 453.

<sup>12</sup> See Bogaty Rebuttal Testimony at 3 (lines 5-11) (relying on *Centennial Puerto Rico License Corp. v. PRTC*, Request for Emergency Order and Complaint, Case No. JRT-2003-Q-0070 (filed May 13, 2003)).

**B. The Board has defined Puerto Rico markets based on existing PRTC wire center service areas.**

In the *Triennial Review Order*, the FCC provided specific guidelines for state commissions to determine the markets appropriate for its analysis in this proceeding. According to the FCC:

A state commission shall define the markets in which it will evaluate impairment by determining the relevant geographic area to include in each market. In defining markets, a state commission shall take into consideration the location of [enterprise] market customers actually being served (if any) by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets profitably and efficiently using currently available technologies.<sup>13</sup>

In creating this standard, the FCC explained that:

State commissions should consider how competitors' ability to use self-provisioned switches or switches provided by a third-party wholesaler to serve various groups of customers varies geographically and should attempt to distinguish among markets where different findings of impairment are likely.<sup>14</sup>

Moreover, the FCC recognized that:

states have implemented varied administrative tools to distinguish among certain markets within a state on a geographic basis for other purposes including retail ratemaking, the establishment of UNE loop rate zones, and the development of intrastate universal service mechanisms. If a state determines, after considering the factors just described, that these already-defined markets would be appropriate to use in this context as well, it may choose to use these market definitions.<sup>15</sup>

Finally, the FCC specifically instructed that state commissions "may not define the market as encompassing the entire state."<sup>16</sup>

In defining the relevant markets in Puerto Rico, the Board found that expert testimony submitted into the record Mr. Don J. Wood and Mr. Brian F. Pitkin was particularly instructive

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<sup>13</sup> See 47 C.F.R. § 51.319(d)(2)(i).

<sup>14</sup> See TRO at ¶ 495.

<sup>15</sup> See TRO at ¶ 496.

<sup>16</sup> See TRO at ¶ 495; see also 47 C.F.R. § 51.319(d)(2)(i).

and appropriate.<sup>17</sup> In their testimony, Mr. Wood and Mr. Pitkin explain that under normal circumstances, many of the FCC's market-definition guidelines can be linked to the economics and other considerations inherent in wire center serving areas.<sup>18</sup> The Board agrees. Accordingly, for the purposes of this analysis, the Board has defined the relevant markets in Puerto Rico by the boundaries of PRTC existing wire center serving areas.<sup>19</sup>

Notwithstanding, the Board notes to the Commission that, although the Board has identified and utilized each PRTC wire center serving area as a separate market in its analysis, the separation of Puerto Rico into these distinct markets effectively does not matter. As Mr. Wood and Mr. Pitkin explain, the operational and most of the economic barriers existing in Puerto Rico to CLEC switch deployment do not vary throughout the island. In particular, the operational and economic barriers flowing from PRTC inexperience and failed experience in providing UNE loops, collocation, and cross-connects extends to every Puerto Rico market equally. Although certain individualized distinctions between markets may still exist (e.g., different PRTC pricing for services provided in different areas of Puerto Rico), the core operational and economic barriers in Puerto Rico apply without geographic distinction to the entire island and alone lead to the ultimate conclusion that regardless of the geographic market definition employed, requesting carriers are impaired without access to unbundled PRTC high-capacity switching.<sup>20</sup>

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<sup>17</sup> See Wood/Pitkin Direct Testimony at 5-6.

<sup>18</sup> See Wood/Pitkin Direct Testimony at 5 (lines 35-43).

<sup>19</sup> See Wood/Pitkin Direct Testimony at 6.

<sup>20</sup> See Wood/Pitkin Direct Testimony at 6 (lines 42-44).

**C. Significant operational impairment exists in all Puerto Rico markets.**

Even if the FCC's national impairment findings represented markets in Puerto Rico, the Board has found that significant operational barriers existing in Puerto Rico markets that the Board believes are sufficient to rebut the FCC's national finding of no impairment.

**1. PRTC is not ready or able to provide stand-alone UNE loops, collocation, or cross-connects.**

The *Triennial Review Order* instructs that the Board may rebut the FCC's national no impairment finding if it finds that operational barriers exist in Puerto Rico markets.<sup>21</sup> According to the FCC:

In making this showing, the state commission shall consider the following operational characteristics: incumbent LEC performance in provisioning loops; difficulties associated with obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC; and the difficulties associated with obtaining cross connects in the incumbent LEC's wire center.<sup>22</sup>

The record developed and reviewed by the Board shows that PRTC has not provided a stand-alone UNE loop to a CLEC in Puerto Rico.<sup>23</sup> PRTC has never completed and provided final acceptance of a collocation for a CLEC in Puerto Rico.<sup>24</sup> And, PRTC has not provided a cross-connect to a CLEC in Puerto Rico.<sup>25</sup> Simply put, the FCC identified three specific activities that it considers to be critical to switch-based competition, and PRTC has not successfully done any of them.

Moreover, the record does not support the contention by PRTC in the proceedings before the Board that, despite its inexperience, PRTC is nevertheless "ready, willing, and able" to

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<sup>21</sup> See *TRO* at ¶ 456; 47 C.F.R. § 51.319(d)(3).

<sup>22</sup> See 47 C.F.R. § 51.319(d)(3)(i).

<sup>23</sup> See Correa Direct Testimony at 8 (lines 1-3). Mr. Correa mistakenly testified that PRTC has provided as contemplated in the FCC's analysis because it has provided UNE-P circuits to WorldNet that include UNE loops. The FCC's analysis, however, refers to providing stand-alone UNE loops -- a fundamentally different process that, unlike UNE-P, involves the physical cutover of loops to a CLEC collocation or switch. See Bogaty Rebuttal Testimony at 5 (lines 19-33); Walker Rebuttal Testimony at 3 (lines 42-45) & 4 (lines 1-6).

<sup>24</sup> See Correa Direct Testimony at 4 (lines 4-6).

<sup>25</sup> See Correa Direct Testimony at 10 (lines 2-5).

provide stand-alone UNE loops, collocation, and cross-connects effectively. To begin with, as a general matter, it is unrealistic to assume that any ILEC can provide a service without difficulties or delays when it has never provided the service before.<sup>26</sup> Indeed, PRTC witness Correa readily admitted in his direct testimony that problems with new service offerings should be expected.<sup>27</sup> Under the best circumstances, therefore, it would be difficult for the Board to find that an ILEC that had never provided a UNE loop, collocation, or cross-connect would nevertheless be able to do so well enough to validate the FCC's no impairment finding.

The record reveals beyond this, however, that this case does not even involve the best circumstances. Rather, the record documents a track record of PRTC wholesale service failures (including specific collocation failures) that make PRTC's claims of instant and unprecedented competence even less credible. Indeed, this documented track record includes instances where even after two to four years of experience and opportunity, PRTC has failed to devote the resources or attention necessary to provide even the most basic services and facilities without substantial operational problems.

To begin with, with regard to collocation, the record simply does not support PRTC contentions that it is "ready, willing, and able," that it is providing collocation "apace," or that it has met all of its interconnection agreement deadlines in dealing with collocation requests.<sup>28</sup> In reality, the only attempt that PRTC has made to provide collocation in Puerto Rico resulted in a formal complaint filed with the Board earlier this year. In the complaint, Centennial reported that PRTC failed to meet a July 2003 interconnection agreement deadline for a number of

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<sup>26</sup> See Bogaty Direct Testimony at 3 (lines 34-41); Walker Rebuttal Testimony at 1 (lines 27-30) & 2 (lines 1-3).

<sup>27</sup> See Correa Direct Testimony at 4 (lines 15-16).

<sup>28</sup> See Correa Direct Testimony at 5 (lines 11-13). Notably, Mr. Reynolds' testimony that PRTC is ready to provide collocation simply because collocation space is available is also not supported by law. The FCC analysis requires consideration of space availability, but also of difficulties and delays in obtaining that collocation space. See *TRO* at ¶ 456.

Centennial collocation orders and that other Centennial collocation orders have been pending with PRTC for over three years.<sup>29</sup> And, Centennial has commented on the record in this proceeding that despite its settlement of its complaint against PRTC, the collocation process devised by PRTC is still “highly problematic” and that “many issues remain.”<sup>30</sup>

Very similarly, the record also reveals that in 2001, PRTC committed to be “ready, willing, and able” to make UNE-P available for the first time in Puerto Rico by no later than October 1, 2002 (i.e. almost a year later and over six years after it was first required by federal law to do so). On October 1, 2002, however, PRTC did not provide UNE-P as required or promised. Although PRTC tacitly accepted and processed initial UNE-P orders, it did so without processes or systems in place for a host of important UNE-P arrangements, including, importantly, detailed usage billing.<sup>31</sup> Moreover, the completion of WorldNet’s initial orders was (and, over a year later, still is) plagued with significant and costly process breakdowns, including widespread and recurring billing errors, completely unnecessary disconnections of WorldNet customers, and a billing system that, according to PRTC, was (and still is) not yet configured to charge WorldNet based on WorldNet customers’ actual usage of UNE-P lines.

Finally, the record also reveals that PRTC has had four years of experience in providing resale services to WorldNet. Yet, despite continuing WorldNet complaints, meetings, and PRTC promises, PRTC is providing bills to WorldNet that require WorldNet to make approximately 5,000 manual adjustments each month and, in some cases, reflect errors that have been included on every WorldNet bill for the past four years.<sup>32</sup>

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<sup>29</sup> See Bogaty Rebuttal Testimony at 3 (lines 5-11) (relying on *Centennial Puerto Rico License Corp. v. PRTC*, Request for Emergency Order and Complaint, Case No. JRT-2003-Q-0070 (filed May 13, 2003)).

<sup>30</sup> See Centennial Response to Initial Board Information Requests II.9 & II.17.

<sup>31</sup> In like manner, the PRTC processes and plans described by Mr. Correa in his direct testimony do not address a number important provisioning issues with which PRTC has historically had substantial and crippling problems, including most prominently, billing.

<sup>32</sup> See Bogaty Direct Testimony at 4 (lines 4-10).



In short, in conducting its analysis, the Board found it difficult to envision any stronger showing of an operational barrier than an ILEC that has absolutely no experience in successfully providing stand-alone UNE loops, collocation, or cross-connects. Indeed, perhaps the only possibility to have a stronger showing is to have a record in which the ILEC not only does not have any successful experience, but actually has negative experiences in providing these services and a consistent track record of being unprepared, uninterested, and incapable of providing wholesale services as and when required or promised. That is the case that the Board, and now the FCC, has before it here.

**2. PRTC is not ready or able to provide other services necessary for CLEC switch deployment.**

In the *Triennial Review Order*, the Board notes that the FCC did not limit state commissions to considering only ILEC performance with regard to providing UNE loops, collocation, and cross-connects. Instead, the FCC went on to ask state commissions also to consider “other evidence” regarding potential operational barriers.<sup>33</sup>

In this case, the record includes “other evidence” of operational barriers in Puerto Rico markets, which, again, reflects problems created by PRTC inexperience and its history of ignoring service obligations until forced to confront them. For example, the record indicates that PRTC is not providing local number portability to CLECs in Puerto Rico and that its failure to do so is currently the subject of a Board complaint.<sup>34</sup> Local number portability is a vital and necessary component to CLEC switch deployment, and it is an obligation and issue that PRTC has largely ignored.

Similarly, the record indicates that PRTC has little to no experience in cooperating with competitors to gain or share access to necessary easements or rights-of-way provided by third

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<sup>33</sup> See *TRO* at ¶ 456.

<sup>34</sup> See Bogaty Direct Testimony at 5 (lines 29-33); Walker Rebuttal Testimony at 4 (lines 2-6).

parties.<sup>35</sup> Quite simply, without this experience or any existing service commitments or processes with regard to this necessary service, PRTC has placed itself in another very powerful position to frustrate CLEC efforts to deploy facilities and, accordingly, to create a significant operational barrier.

**3. Puerto Rico is not ready to effectively provide services necessary for CLEC switch deployment.**

In addition to “other evidence” about operational barriers flowing from PRTC, the record also includes evidence about operational barriers flowing from the state of Puerto Rico markets themselves. In particular, the record reflects that Puerto Rico is simply not as prepared or experienced in facilitating switch-based competition as the other jurisdictions subject to the *Triennial Review Order*.<sup>36</sup>

As noted in the record, unlike many of its counterpart jurisdictions, Puerto Rico has yet to enact or provide comprehensive performance standards for PRTC in its provision of critical services to CLECs.<sup>37</sup> The absence of these standards has relegated competitors to trying to create such standards through contractual obligations and, in most cases, extremely costly and extended enforcement proceedings before the Board.<sup>38</sup>

Moreover, as noted above, CLEC switch deployment in Puerto Rico has been negligible in comparison to other jurisdictions governed by the *Triennial Review Order*. Puerto Rico simply has not yet had the opportunity to establish the support systems and vendors, consultants, technical experts, and other critical resources that have become readily available in other

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<sup>35</sup> See Bogaty Direct Testimony at 5 (lines 34-37).

<sup>36</sup> See WorldNet Response to Supplement Board Interrogatory No. 14; see also Walker Direct Testimony at 4 (lines 42-45) & 5 (lines 1-11).

<sup>37</sup> See WorldNet Response to Initial Board Interrogatory No. 17.

<sup>38</sup> See WorldNet Response to Initial Board Interrogatory No. 17.

jurisdictions.<sup>39</sup> In essence, without access to PRTC high-cap switching, CLECs would be forced to incur the time, resources, and expense of creating these support systems nearly from scratch.

Finally, another operational barrier noted in the record regarding Puerto Rico is the relative lack of competitive transport facilities.<sup>40</sup> Under even the best-case scenario, a CLEC switch owner has only two alternatives for transport in Puerto Rico: PRTC or Centennial. In the highly likely event that Centennial does not provide services on a particular route, WorldNet would be compelled to obtain transport from PRTC, which would have no incentive to provide this service swiftly or at a competitive price.

**D. Significant economic barriers exist in all Puerto Rico markets.**

Just as in its evaluation of operational barriers, the Board has found sufficient evidence of economic barriers in Puerto Rico markets to rebut the FCC's national no impairment finding.

In considering economic barriers in Puerto Rico, the FCC required the Board to consider the following economic characteristics:

the cost of entry into a particular market, including those caused by both operational and economic barriers to entry; requesting telecommunications carriers' potential revenues from serving enterprise customers in that market, including all likely revenues to be gained from entering that market; the prices requesting telecommunications carriers are likely to be able to charge in that market, based on a consideration of prevailing retail rates the incumbent LEC charges to the different classes of customers in the different parts of the state.<sup>41</sup>

**1. The operational barriers that now exist in Puerto Rico markets create substantial economic barriers.**

The operational barriers that now exist in Puerto Rico markets create plain economic barriers that the Board believes are sufficient to rebut the FCC's national no impairment finding.

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<sup>39</sup> See WorldNet Response to Initial Board Interrogatory No. 17.

<sup>40</sup> See WorldNet Response to Supplemental Board Interrogatory No. 14.

<sup>41</sup> See 47 C.F.R. § 51.319(d)(3)(i)(B).

Indeed, there are effectively two categories of operational barriers in Puerto Rico that create these economic barriers.

First, economic barriers are created in Puerto Rico by the operational barriers that are the focus of the FCC's analysis. In particular, PRTC's and Puerto Rico's inexperience with UNE loops, collocation, cross-connects, and other services critical (e.g., local number portability) to switch-based competition plainly sets the stage for untimely and unreliable performance. This poor performance will invariably impose upon Puerto Rico CLECs substantial costs, including things like lost customer opportunities and revenues, as well as the dedication of administrative resources required for CLECs to, among other things, work through primarily manual processes, learn and adapt to new procedures, monitor, identify, and escalate process breakdowns, reconcile constant billing errors, and (as the record in this case indicates), at times, develop necessary PRTC processes where PRTC has failed to do so.

Second, economic barriers are also created in Puerto Rico by operational barriers that nevertheless exist, but are not the focus of the FCC's analysis per se. For example, the record reflects that PRTC has an unparalleled history of wholesale service performance problems that have forced CLECs in Puerto Rico to incur extraordinary costs.<sup>42</sup> These costs routinely include: (1) the cost of months or years of PRTC inaction or failed performance (with the attendant loss of customer opportunities and revenues), (2) the cost of almost constant service commitment follow-up, issue escalation, error correction, and bill reconciliation, and, ultimately (3) the cost of holding PRTC to its contract and legal obligations by filing a Board complaint. Moreover, even when PRTC has purported to act, the record reflects that it has responded with ad hoc,

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<sup>42</sup> See WorldNet Response to Initial Board Interrogatory No. 17.

piecemeal, unwritten, manual, and often ignored process, procedures, and performance that increase CLEC costs exponentially as well.<sup>43</sup>

Finally, the costs forced upon CLECs in Puerto Rico by all of these barriers will, in most cases, be disproportionately greater than CLECs in most other jurisdictions. In short, CLECs in Puerto Rico face a greater cost burden than CLECs in other jurisdictions because PRTC has kept itself so far behind most other ILECs in its service experience and performance. For example, where (as here) PRTC has little to no experience with UNE loops, collocation, cross-connects, and other related services, ILECs in most other jurisdiction have been developing and refining their processes and procedures for these services for years. Accordingly, other ILECs (unlike PRTC) have significantly diminished the difficulties and delays in providing these services and, thus, significantly diminished the costs associated with such difficulties and delays. Similarly, the record reflects no other jurisdiction in which CLECs are relegated to manual and informal processes, systemic and chronically inaccurate bills, and service enforcement litigation to the extent that CLECs in Puerto Rico are.

In short, all of the existing operational barriers in Puerto Rico markets translate into significant and unique economic barriers for Puerto Rico CLECs.

**2. The likely revenues for CLEC entry into Puerto Rico markets are an economic barrier.**

In addition to the economic barriers created by existing operational barriers in Puerto Rico, the record also establishes an economic barrier in that likely revenues would not justify CLEC service to the Puerto Rico enterprise market without access to PRTC high-cap switching.

The record currently contains potential revenue evaluations by PRTC witness Reynolds and by WorldNet witnesses Wood and Pitkin.<sup>44</sup> In his testimony, Mr. Reynolds purports to

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<sup>43</sup> See WorldNet Response to Initial Board Interrogatory No. 17.

provide what he calls a “back of the envelop calculation” to conclude that the revenues associated with a CLEC providing retail service to an enterprise market customer in Puerto Rico justifies CLEC deployment of a switch.<sup>45</sup> According to Mr. Reynolds’ calculation, a CLEC would need only 30 DS1s per month to economically justify the cost of a switch, collocation, and DS1 loops.<sup>46</sup>

In their testimony, Mr. Wood and Mr. Pitkin have identified a number of fundamental errors in Mr. Reynolds’ very brief and oversimplified analysis. Among these errors, Mr. Reynolds ignored a number of costs inputs (including, but not limited to, the cost of DS1 loop access, backhaul transport access, collocation equipment, non-recurring UNE and collocation charges, and internal administrative CLEC costs involved in switch deployment).<sup>47</sup> In addition, Mr. Reynolds overstated access revenues by, among other things, using an intra-island access rates that are nine times what the Board has set for Puerto Rico.<sup>48</sup> Ultimately, with corrected inputs, Mr. Reynolds’ model indicated that (even with certain costs excluded) a CLEC would need at least 200 DS1s per month to economically justify the deployment of a switch, collocation, and DS1 loops.<sup>49</sup> In other words, the formula indicated that such deployment could only be justified by CLEC market penetration numbers that far exceed what most, if not all, CLECs in Puerto Rico now currently hold for all of Puerto Rico, much less discrete markets within the island.

Simply put, the Board has found that substantial economic barriers exist in Puerto and that they are sufficient to rebut the FCC’s national no impairment finding.

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<sup>44</sup> See Reynolds Direct Testimony at 8 (lines 6-20) & 9 (lines 1-5); Wood/Pitkin Rebuttal Testimony at 1-5.

<sup>45</sup> See Reynolds Direct Testimony at 8 (line 19).

<sup>46</sup> See Reynolds Direct Testimony at 8 (lines 18-20)

<sup>47</sup> See Wood/Pitkin Rebuttal Testimony at 2 (lines 40-41) & 3 (lines 1-29).

<sup>48</sup> See Wood/Pitkin Rebuttal Testimony at 4 (lines 4-23).

<sup>49</sup> See Wood/Pitkin Rebuttal Testimony at 4 (lines 41-44) & 5 (lines 1-14).

## CONCLUSION

In the rest of the jurisdictions covered by the FCC's no impairment finding, competitive carriers have arguably had the benefit of the scheme that Congress created to promote competition. In that scheme, Congress sought to give competitors mechanisms like resale and UNEs to establish a market presence that would allow them to transition to facilities-based service. In Puerto Rico, however, competitors have not yet had this opportunity. Although PRTC has offered resale for several years, it did not provide a UNE to a competitor in Puerto Rico until late last year. And, perhaps more importantly, PRTC has still not provided to a competitor a single high capacity UNE circuit.

At a minimum, the unavailability of UNE-based service as a transition to facilities-based service (as Congress intended) has created an obvious operational and economic barrier for competitors in Puerto Rico that competitors in almost every other jurisdiction simply do not face. Simply put, PRTC has not given competitors in Puerto Rico the opportunity to establish a market presence through all of the tools that Congress provided. And, in this proceeding, the Board believes that it would be appropriate to preserve a presumption in Puerto Rico markets that competitors no longer need a transition mechanism that PRTC has not even made available to them yet.

The FCC's presumption of no impairment does not reflect the reality of a competitive market in Puerto Rico. Substantial and unique operational and economic barriers exist in Puerto Rico markets. Accordingly, the Board requests that the Commission waive its rule exempting ILECs from unbundling circuit switching used to provide service to all markets in Puerto Rico.

Respectfully submitted,

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Puerto Rico Telecommunications Regulatory Board